DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. HM-171B; Amdt. Nos. 171-67, 172-75, 176-14, 178-73]

Use of United Nations Shipping Descriptions; Correction

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Correction of final rule.

SUMMARY: This document corrects amendments to the Optical Hazardous Materials Table (Optional Table) which appears in 49 CFR 172.102 that were published in the **Federal Register** on October 7, 1982, FR Doc. 82-27290 (Docket HM-171B, FR 44466). The purpose of this correction is to notify users of the amendments to the Optional Table that all except two entries in the second column that were contained within parentheses should have been italicized and the parentheses removed. In addition, the heading of the columns of the Optional Table are corrected. Since the use of the Optional Table is, as the name implies, an option for international shipments, this rule change correction will not impose an undue burden on persons affected by the regulations.

EFFECTIVE DATE: November 4, 1982.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, Office of Hazardous Materials Regulation, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590 (202) 426-0656.

SUPPLEMENTARY INFORMATION: This correction is necessary because descriptive text accompanying many of the proper shipping names in the second column of the October 7, 1982, amendment of the Optional Table were not italicized as intended. Therefore, the parenthetical portion of those entries tends to be confusing. Additionally, some of the column headings for the Optional Table published in that amendment contain abbreviations or incorrect identifications. These are corrected to read as they appear in the current § 172.102 except that Column (3) is changed from "IMCO class" to "IMO class." Action has been taken to assure that the 1982 edition of 49 CFR Parts 100-177 will contain the correct entry for the October 7 changes and additions to the Optional Table, but the **Federal Register** publication must be used until the 1982 edition of the Hazardous Materials Regulations becomes available.

In consideration of the foregoing, the following corrections are made in Docket No. HM-171B appearing in Part II, page 44466 of the **Federal Register** issued on October 7, 1982. (FR Doc. 82-27290).

PART 172—HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

§ 172.102 [Corrected]

1. On pages 44467 through 44471, § 172.102, each entry of descriptive material within parentheses accompanying a proper shipping name in the amendments to the Optional Table is changed to an italicized entry and the parentheses are removed from these entries except "(M.D.I.)" in the entry "Diphenylmethane diisocyanate (M.D.I.)" and "(T.D.I.)" in the entry "Toluene diisocyanate (T.D.I.)."

2. The column headings in the Optional Table are corrected to read as follows:

§ 172.102 OPTIONAL HAZARDOUS MATERIALS TABLE

(1)	(2)	(3)	(4)	(5)	(6)	(7) Vessel Storage Requirements		
Notes and Symbols	Hazardous Materials Description and Proper Shipping Names	IMO class	Identification Number	Label(s) required	Packaging Group	(a) Cargo vessel	(b) Passenger vessel	(c) Other requirements

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this document will not result in a "major rule" under terms of Executive Order 12291 or a significant regulation under DOT's regulatory policy and procedures (44 FR 11034) or require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) I certify that this final rule will not have a significant economic impact on a substantial number of small entities. A regulatory evaluation and environmental assessment are available for review in this docket.

Issued in Washington, D.C. on November 4, 1982.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 82-30895 Filed 11-10-82; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1057

[Ex Parte No. MC-43 (Sub-13)]

Lease and Interchange of Vehicles

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is modifying its lease and interchange regulations, set forth at 49 CFR 1057.12, (a) to require specific performance of lease provisions by carriers, (b) to specify that payment to owner-operators for trip leases be made by the permanent lease carrier, (c) to limit the paperwork which carriers may require as a condition of payment to owner-operators, (d) to require carriers to pay fines for overweight and oversize trailers in certain instances, (e) to require carriers to give prorated refunds for returned base plates, and (f) to require carriers to specify the amount of charge-back items together with a recitation of how the amount is computed, and afford owner-operators copies of those documents necessary to determine the validity of the charge. These modifications are necessary in order to assure continued participation by owner-operators in the surface transportation industry.

EFFECTIVE DATE: These rules will be effective on January 11, 1983.

FOR FURTHER INFORMATION CONTACT:

Wayne Miller, (202) 275-1763

or

Mary Kelly, (202) 275-7292.

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking published in the **Federal Register** on September 2, 1981,

at 46 FR 44013, this proceeding was instituted to modify the Commission's leasing regulations in Title 49 of the Code of Federal Regulations, Chapter X, Part 1057—Lease and Interchange of Vehicles (49 CFR Part 1057). The notice outlined several proposed modifications of the leasing regulations.

Over 100 carriers, owner-operators, private individuals, Government agencies, and unions responded to the notice, the overwhelming majority being either individual motor carriers or carrier conferences. As we noted in the notice of proposed rulemaking, this proceeding arose out of attempts to solve serious and longstanding problems facing owner-operators. We conclude that these modifications are necessary in order to assure continued participation by owner-operators in the surface transportation industry. Careful consideration has been given to the effect the final rules will have on all segments of the motor carrier industry.

This decision addresses each of the several areas contained in the notice of proposed rulemaking. Any changes, modifications, or corrections to the proposed rules are explained and discussed.

Discussion of Material Issues

1. *Performance by carriers of terms of lease.* We will adopt the change to § 1057.12 as set forth in the appendix. The proposed rules also included a change in § 1057.1 to explicitly mention lease performance as an obligation under the regulations. We have concluded, however, that this change would be redundant in light of our new more precise requirements in § 1057.12. Therefore, § 1057.1 will not be altered in this proceeding.

Certain parties filing comments argue that either of these changes exceeds the Commission's jurisdiction, and is an infringement upon private contractual relationships. They contend that a rule requiring specific performance would place this Commission in the position of a bargaining agent for the owner-operators; that the judicial system is available for the resolution of differences between carriers and owner-operators; and that no need has been demonstrated for the creation of a second forum. They argue further that the statute does not delegate to the Commission authority to institute civil actions for breach of contract (lease) between an authorized carrier and an owner-operator. The parties maintain that the Commission's jurisdiction is limited by 49 U.S.C. 11107 to authority to require that arrangements between equipment lessors and authorized carriers be reduced to writing and contain certain provisions.

The Commission derives its authority to regulate leasing practices between carriers and owner-operators from its general rulemaking powers under 49 U.S.C. 10321(a). *Mourning* v. *Family Publication Services,* 411 U.S. 356, 369 (1963); *American Trucking Ass'ns, Inc.* v. *United States,* 344 U.S. 298 (1953). In the *ATA* case, the Supreme Court rejected an argument that, in the absence of express statutory delegation of power, the Commission lacked authority to regulate leasing practices between carriers and owner-operators. The Court emphasized that its "function * * * does not stop with a section-by-section search for the phrase 'regulation of leasing practices' among the literal words of the statutory provisions." 344 U.S. at 309. Rather, the Court looked to the Commission's general regulatory purposes. It concluded that, since the aim of the rules was to prevent conditions which may "frustrate the success of the regulation undertaken by Congress," the Commission's action was within its rulemaking power, which is "coterminous with the scope of agency regulation itself." *Id.* at 310, 311. Nor does 49 U.S.C. 11107, enacted after the *ATA* case, limit the Commission's authority to regulate the relationship between carriers and owner-operators to the terms set out in that section. In *Global Van Lines* v. *I.C.C.,* 627 F.2d 546 (D.C. Cir. 1980), the court found that nothing in the legislative history of 49 U.S.C. 11107 indicated a Congressional intent to restrict the broad power of the Commission recognized in the *ATA* case. Rather, Congress intended to preserve the broad authority of the Commission to regulate motor carriers. If the regulations reasonably relate to the purposes of the Act, they are allowed. *Id.*, 627 F.2d at 551.

The proposed rule is consistent with our general powers under the Act as interpreted in the *ATA* case. Authority for such a rule is premised on the Commission's duty under the National Transportation Policy to promote safe, adequate, economical and efficient transportation, and to encourage fair wages and working conditions in the transportation industry. The evidence underlying this rulemaking has indicated that owner-operators have neither the time nor the monetary resources to take carriers to court for breach of contract, and that the judicial system, therefore, is not a meaningful forum. In addition, to force owner-operators to institute individual litigation against carriers could result in disruptions in transportation services and the perpetuation of unfair wages and working conditions. The proposed rule is aimed at alleviating this problem. Contrary to the assertions of certain parties, the Commission will not institute civil actions for breach of contract on behalf of owner-operators. The Commission will, however, enforce these regulations and prosecute those carriers which violate the regulations.

Nor does this rule represent an unwarranted intrusion into the field of labor relations. In *Local 1976, United Brotherhood of Carpenters and Joiners of America v. NLRB,* 357 U.S. 93, 108–111 (1958), and *Burlington Truck Lines, Inc., v. United States,* 371 U.S. 156 (1962), the Supreme Court recognized that there are overlapping areas of jurisdiction between the Interstate Commerce Commission and the National Labor Relations Board and that independent consideration and resolution by the two agencies of problems arising in these areas was possible and, indeed, necessary. The Court required that when the two agencies are regulating in an area of overlap, they should seek only "precise and narrowly drawn" remedies, which go no further than necessary to accomplish the policy of the respective act being applied.

This rule is designed to insure that authorized carriers comply with the Commission's Leasing Regulations, to reduce the opportunity for abuses, to insure an efficient transportation system, and to encourage fair wages and working conditions. The rule strives to accomplish these stated purposes of the Motor Carrier Act of 1980.

We conclude that the Commission has both the implied and express authority to require specific performance of the terms of a lease. We have determined to place such a requirement in § 1057.12, "*Written Lease Requirements*", rather than in § 1057.1, "*Applicability*", and have modified the proposed rules accordingly.[1]

2. *Payment within 15 days.* We adopt the proposed modification of 49 CFR 1057.12(g) to specify that payment to the owner-operator for trip leases must be made by the permanent lease carrier within 15 days from submission of necessary paperwork. The change is set forth in the appendix.

Certain parties filing comments maintain that in many instances owner-operators arrange trip leases without specific authorization from, or

[1] We note the recent decision in *I.C.C.* v. *Wheatley Trucking, Inc.*, No. J–82–938 (U.S. District Court, District of Maryland, June 25, 1982) which requires the defendant carrier to both conform its leases to the provisions of our leasing regulations, and to perform those provisions as well.

knowledge of, the permanent lease carrier. They argue that it is unfair for the permanent lease carrier to be required to pay the owner-operator if the owner-operator engaged in a trip lease in violation of the terms of the permanent lease, or if the permanent lease carrier was unaware of the trip lease and had not as yet been compensated by the trip lease carrier. It is suggested that the proposed rule should be modified to require the permanent lease carrier to pay within 15 days of its receipt of payment from the trip lease carriers.

The purpose of this rule is to assure that owner-operators are compensated promptly for services lawfully performed on behalf of the permanent lease carrier. A lawful trip lease can only be entered into between authorized carriers.[2] Consequently, an owner-operator cannot enter into a trip lease on his own behalf. If permanent lease carriers wish to require prior approval of trip leases entered into on their behalf by owner-operators, there is certainly no reason why such a provision cannot be included in their leases with owner-operators. Permanent lease carriers of course will not be responsible for payment for trip leases entered into in violation of prior approval provisions.

Prompt compensation would be frustrated if permanent lease carriers were only required to pay owner-operators when, at some indefinite future time, payment was received from trip lease carriers. Permanent lease carriers have the responsibility to pay owner-operators within 15 days. This responsibility continues to exist irrespective of when payment is received from the trip lease carrier.[3]

3. *Required paperwork.* We also adopt the proposed modification of 49 CFR 1057.12(g) to specify what paperwork may be required by carriers prior to payment to owner-operators.

Some carriers have avoided their obligation to pay promptly by specifying unusual types or amounts of paperwork as a condition for payment. The existing rules state only that the lease must specify what paperwork is required; they are silent as to just what that paperwork is to include. This rule is intended to circumscribe the freedom now enjoyed by carriers in prescribing required paperwork to more accurately conform with the intent of the leasing rules.

Certain parties of record object to our failure to include the submission of completed log books as a condition for payment. They contend that the only way to make owner-operators submit log books is to make their submission a prerequisite to payment. If log books are not submitted, they note, compliance with Department of Transportation (DOT) and State regulations would be impossible. In light of these comments, log books required by DOT may be required as a condition of payment.

Finally, we adhere to the requirement that no time limits be set for the submission of paperwork. In the notice of proposed rulemaking we noted that in certain instances carriers have imposed requirements that the required paperwork must be submitted within 24 hours to trigger the 15 day payment period. We reiterate that such a requirement is contrary to the intent of the leasing rules and is prohibited.

4. *Rated freight bills.* The proposed modification to § 1057.12(h), providing that owner-operators, in all instances, be furnished with a copy of a rated freight bill, will not be adopted.

Many carriers and carrier organizations comment that to require a copy of a rated freight bill to be furnished to all owner-operators, regardless of the method of compensation, would impose needless and excessive administrative costs and burdens. They contend that the proposed rule would be of little benefit to owner-operators and that it would cause discord between owner-operators and their authorized carriers. The American Trucking Associations (ATA) indicates that over 80 percent of owner-operators are now compensated on a percentage of revenue basis, and, in accord with the existing requirement, are already receiving copies of rated freight bills. The ATA further indicates that rated freight bills are not necessary in those instances in which a mileage based compensation is employed, since the owner-operators are able to compute for themselves what their costs per mile are and to bargain accordingly. Upon consideration of these comments, we conclude that the benefits of full disclosure arising from the proposed modification are outweighed by the burdens which would be imposed on honest and efficient motor carriers. We find that a requirement for motor carriers to provide all owner-operators with a rated freight bill, regardless of the method of compensation, is unnecessary.

5. *Fines.* We adopt, with some modification, the proposal to require carriers to assume the costs of fines for overweight and oversize trailers. The change is reflected in § 1057.12(f) in the appendix.

Certain parties argue that the proposed rule violates due process because it assertedly imposes a standard of strict liability upon authorized carriers for violations of State laws by parties other than the carriers. These parties point to instances in which overweight violations may involve preloaded or sealed trailers and the violations may result solely from the acts or omissions of owner-operators, i.e., overweight violations caused by lifting the axles of equipment, or drivers traveling off-route and traversing bridges and highways where the posted weight limits are exceeded. The parties note that under the proposed rule there is no provision for penalizing the owner-operator who is less than diligent in seeking to protect the carrier's interests. Under these circumstances the carriers assertedly would be victimized by owner-operators who simply do not care whether the carriers are cited for violations. While the carriers could dismiss such owner-operators, the carriers are, nevertheless, not protected from liability. The parties feel that unless a carrier knowingly instructs a driver to ignore a known weight violation, it is arbitrary and unreasonable to place the full burden and the sole responsibility upon the carrier.

We agree with the parties that the authorized carrier should not be made to bear the blunt of fines incurred solely through the conduct of an owner-operator, just as owner-operators should not be held strictly liable for fines resulting from the conduct of shippers or carriers. We have, therefore, modified the proposed rule to provide that except when the violation is the result of the act or omission of the owner-operator, the authorized carrier must bear the costs of fines on shipments which are within its control. In accordance with a suggestion of the parties, we also have modified the proposed rule to include improperly permitted overweight, as well as overdimension, loads. However, because we do not intend for the rule to be an all-inclusive listing of instances in which the responsibility for payment of fines rests with the carrier, we have inserted our overriding concern that such responsibility rests with the carrier whenever the trailers and/or their lading are outside the control of the lessor.

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[2] This applies, of course, only to trip leases subject to the Commission's jurisdiction. We are currently considering the possible expansion of trip leasing to include private carriers as a source of equipment in Ex Parte No. MC-43 (Sub-No. 12), *Leasing Rules Modifications.*

[3] We note that carriers must currently pay owner-operators for shipments transported under permanent lease within 15 days irrespective of when payment is received from the shipper.

6. *Base plates.* Parties filing comments correctly note that the proposed rule requires base plate refunds in full, under all circumstances. This was an error in the notice. The discussion portion of the notice correctly conveyed our intention to require prorated refunds, rather than refunds in full, for the amount paid for base plates by the lessor. To require a full refund would provide the lessor with a windfall since it might be able to make use of a base plate for an extended period of time without charge. In addition, certain parties are opposed to an unrestricted requirement for prorated refunds. They note that many States do not provide refunds or credits for base plates. They argue that to require carriers to give refunds, without regard to whether the carriers have received a refund or a credit from the State, or whether the carrier has been able to transfer the registration to another lessor, is arbitrary and unreasonable. In light of these comments, the proposed rule will be modified to provide that in the event any refund or credit is authorized to be received from a State for a returned base plate, or in the event that the base plate is authorized to be resold to another lessor, the amount received will be refunded to the initial lessor on whose behalf the base plate was first obtained. This provision will eliminate any unjust enrichment on the part of both carriers and owner-operators. These changes are reflected in § 1057.12(f) in the appendix.

7. *Charge-backs.* We will adopt with some modification the proposed change to § 1057.12(i). Parties filing comments have pointed out that State laws can significantly affect what and how much is charged back to the owner-operator. Charge-back items include such items as vehicle registration fees, fuel taxes, highway use taxes, insurance, and weight taxes. While agreeing that charge-back items should be specified in the lease, the parties feel that it would be impossible to set forth the exact amount of each item. In order to keep leases current, they would have to be amended several times each year because State laws frequently change. In many cases, the exact amount is not known until after the liability is incurred, as with fuel and other operating expenses. The parties contend that the costs and administrative burdens associated with the proposed rule would be enormous, and would far exceed the benefits to be derived.

In light of these comments, we conclude that, rather than require carriers to state with specificity the amount of charge-backs, we should, instead, require that the lease contain the charge-back items, together with a recitation as to how the amount of each item is computed. To ensure that the owner-operator has access to these computation methods, we will require that owner-operators be afforded copies of those documents which are necessary to determine the validity of the charge. With such information, the owner-operators will be able to ascertain whether these charges have been computed correctly.

8. *Insurance.* Finally, parties see no necessity for a requirement that carriers summarize the insurance coverage provided to the owner-operator. We agree, especially in view of our alteration of the proposed changes to § 1057.1(i), so as to require that owner-operators have access to all documents supporting any charge-back. This will include insurance charge-backs, and should deter any excessive "mark up" of insurance, as discussed in our notice of proposed rulemaking. In addition, the obligations of § 1057.1(k) concerning insurance disclosures as it presently exists will continue to apply. We will not, therefore, alter that subsection as originally proposed.

Environmental and Energy Considerations

We adopt our preliminary finding in our notice of proposed rulemaking that this action will not have any significant impact on the quality of the human environment or conservation of energy resources. No comments have been submitted on any matter indicating that a contrary position is warranted. We reaffirm our position that these rule changes will improve operating efficiency.

Regulatory Flexibility Analysis

We affirm our previous determination that this proceeding will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1057

Motor carriers, Owner-operators, Equipment leasing.

Adoption of Rules

Accordingly, we adopt the revised rules as set forth in the appendix.

This action is taken under authority contained in 49 U.S.C. 10321 and 11107 and 5 U.S.C. 553.

Decided: November 2, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Commissioner Sterrett, joined by Commissioner Andre, dissented with a separate expression. Commissioner Gradison commented with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Sterrett, joined by Commissioner Andre, dissenting:

The rules adopted by the majority are a poor substitute for the natural workings of the market place and should not be adopted. They will prevent parties from privately negotiating contract provisions, the very practice which we should be encouraging.

Although the rules adopted by the majority apparently are intended to benefit owner operators, they may instead seriously harm these individuals. For example, consider the rule which requires permanent lessees, rather than trip lessees, to pay owner operators for trip leased services. It is most likely that regulated carriers will respond to this new rule by requiring owner operators, as part of their contracts, to obtain the approval of permanent lessees prior to engaging in trip leasing. This, in turn, will reduce the ability of owner operators to trip lease, thereby increasing their empty mileage and reducing their revenues, a result which hurts owner operators and benefits no one else. Others among the new rules, particularly the rules defining the responsibility for fines and requiring payment without receipt of full paperwork, are seemingly counter-productive and unworkable. They will make the use of independents less attractive, and in many instances will make the difference between use of independent lessors and alternative transportation arrangements.

I believe the Commission should be taking steps to reduce regulation in ways which will benefit not only owner operators, but the consuming and shipping public as well. Prime candidates for this type of change are existing regulations which require that owner operators' leases with regulated carriers be for 30 days or longer. Unless an owner operator is operating under a 30 day, or longer, lease with a regulated carrier, he is prevented from providing trip lease services for any regulated carrier. These 30 day minimum regulations, are counter-productive, produce operating inefficiencies, and obviously limit the potential enterprise of many independent operators. Rather than adopting more regulations, we should be eliminating regulatory impediments.

For these reasons, I reject the proposed regulations.

Commissioner Gradison, commenting:

The final rules adopted today are a modified version of the rules proposed last year. We have eliminated proposed requirements that carriers provide rated freight bills and summaries of insurance coverage to all owner-operators. We have adjusted other requirements, including those relating to paperwork, fines, charge-backs, and base plates, in order to minimize the burden on authorized carriers. As a result, we have, I think, adopted rules which will provide some measure of equitable assistance for owner-operators without being a burden to honest and efficient motor carriers.

The minimal rules adopted are designed to foster an environment in which carriers and owner-operators will be able to negotiate and cooperate to provide the transportation services the nation needs. I believe the rules will result in fewer disputes and less need for court or Commission involvement. The marketplace should function better as the rights and responsibilities of both carriers and owner-operators will be more clearly defined.

Appendix

PART 1057—LEASE AND INTERCHANGE OF VEHICLES

In Part 1057 of Title 49, § 1057.12 is amended by revising the introductory text of the section and paragraphs (f), (g), and (i) to read as follows:

§ 1057.12 Written lease requirements.

Except as provided in the exemptions set forth in subpart C of this part, the written lease required under § 1057.11(a) shall contain the following provisions. The required lease provisions shall be adhered to and performed by the authorized carrier.

* * * * *

(f) *Items specified in lease.* The lease shall clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, tolls, ferries, detention and accessorial services, base plates and licenses, and any unused portions of such items. Except when the violation results from the acts or omissions of the lessor, the authorized carrier lessee shall assume the risks and costs of fines for overweight and oversize trailers when the trailers are pre-loaded, sealed, or the load is containerized, or when the trailer or lading is otherwise outside of the lessor's control, and for improperly permitted overdimension and overweight loads and shall reimburse the lessor for any fines paid by the lessor. If the authorized carrier is authorized to receive a refund or a credit for base plates purchased by the lessor from, and issued in the name of, the authorized carrier, or if the base plates are authorized to be sold by the authorized carrier to another lessor the authorized carrier shall refund to the initial lessor on whose behalf the base plate was first obtained a prorated share of the amount received.

(g) *Payment period.* The lease shall specify that payment to the lessor under permanent or trip lease to the authorized carrier shall be made by the permanent lease carrier within 15 days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier. The paperwork required before the lessor can receive payment is limited to log books required by the Department of Transportation and those documents necessary for the authorized carrier to secure payment from the shipper. The authorized carrier to secure payment from the shipper. The authorized carrier may require the submission of additional documents by the lessor but not as a prerequisite to payment. Payment to the lessor shall not be made contingent upon submission of a bill of lading to which no exceptions have been taken. The authorized carrier shall not set time limits for the submission by the lessor of required delivery documents and other paperwork.

* * * * *

(i) *Charge-back items.* The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.

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[FR Doc. 82-30993 Filed 11-10-82; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 83

Implementation of Fish and Wildlife Conservation Act of 1980

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule implements the Fish and Wildlife Conservation Act of 1980 which provides for Federal funds to States for developing, revising and implementing, in consultation with appropriate Federal, State and local and regional agencies, plans for the conservation of fish and wildlife. It clarifies requirements set forth in the Act and merges with them other requirements placed on grantees and grant-administering agencies by other laws, Executive orders and policies such as Office of Management and Budget (OMB) Circular A-102.

EFFECTIVE DATE: December 13, 1982.

FOR FURTHER INFORMATION CONTACT: Charles K. Phenicie, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C., 20240, telephone 703/235-1526.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 14739-14743 of the **Federal Register** of April 8, 1982, and invited comments for 45 days ending May 21, 1982. Comments were received from 28 sources including State and Territorial fish and wildlife agencies, Federal natural resource agencies and non-governmental conservation groups. The following is a summary of the major comments received and our response to each.

1. *Comment.* One State questioned the advisability of showing feral animals to be ineligible for inclusion as nongame under this program.

Response. Feral animals are specifically excluded from the nongame classification by language contained in the Act.

2. *Comment.* Two States expressed concern that the rule would not allow planning for wildlife communities as opposed to wildlife species.

Response. Although its meaning is somewhat broader, the term "ecologic association of species and subspecies" as used in § 83.1(h) fully accommodates the designation of wildlife communities as plan species.

3. *Comment.* One State proposed that the word "commerce" in the definition of nongame fish and wildlife (§ 83.1(g)(1)) would preclude actions to control a species which might be regarded as commercial under certain circumstances.

Response. The presence of the word "commerce" does preclude declaring a commercial species to be a plan species, but it does not prevent the controlling of a commercial species to assure the welfare of a plan species.

4. *Comment.* One State objected to bringing species which are normally hunted under the classification of nongame when they occupy areas not open to hunting since such classification could prompt charges that populations are being built up in anticipation of future harvests.

Response. This provision, taken directly from the Act, enables managers to address the needs of these populations and the nonconsumptive interests of the people.

5. *Comment.* One State requested the addition of language to specify that the exclusion of endangered and threatened species from the nongame classification applies to federally listed species only (§ 83.1(g)(2)).

Response. We believe this point is adequately made by the specification in the same section that the endangered and threatened species are listed under the Endangered Species Act of 1973.

6. *Comment.* Three States questioned the necessity for the governor to designate the State agency responsible for the implementation of this Act when the State legislature has already specified an agency to be responsible for all fish and wildlife.

Response. Participation is limited to the agency(ies) having "primary legal authority for the conservation of fish and wildlife" (§ 83.1(c)). A determination by the governor or chief executive will be required only when there is more than one agency having such primary legal authority. Wording has been added in § 83.2 to avoid confusion on this point.

7. *Comment.* One State questioned the absence from § 83.3 of any minimum or maximum amount a State may be allocated.

Response. The allocation formula, including minimum and maximum allocation limits, is clearly specified in the Act (section 8(b)); hence, it is not repeated in this rule.

8. *Comment.* A citizens group expressed concern that the rule was less specific than the Act in discussing requirements pertaining to an action to be undertaken in lieu of a conservation plan. It also noted that the rule does not interpret the word "appropriate" in section 5(d)(1) in specifying requirements for such a proposal, in addition to those listed.

Response. It is specified in § 83.8(a) that all proposals must be in accordance with the Act, this rule and the Federal Aid Manual. Thus, the rule is drawn to clarify and complement the Act as necessary, but not to restate or replace it. We believe the provisions contained in section 5(d)(1) of the Act and in § 83.4(a)(1) of this rule set forth sufficient basic requirements. More detailed requirements and procedures are treated in the Federal Aid Manual.

9. *Comment.* One State proposed rewording § 83.4(a)(1) to preclude the performance of an action in lieu of a conservation plan if the action is for the benefit of the users of nongame.

Response. We find nothing in the legislative history to indicate that Congress intended to exclude such actions. We believe it would be inadvisable to introduce such a restriction since we expect legitimate emergencies could occur requiring such a project (e.g., acquisition of critical land which is due to be withdrawn from the market).

10. *Comment.* One State suggested revising § 83.4(b) to clarify that only the designated State agency may apply for funding of a project under this Act.

Response. This revision has been inserted to avoid confusion.

11. *Comment.* One State noted an inconsistency in dates between the Act (section 5(d)) and the rule (§ 83.4(a)(3)).

Response. The error in the rule has been corrected.

12. *Comment.* One State questioned the advisability of the percentage limitations given in § 83.5(a), (c) and (e).

Response. Each of these is specified in the Act and therefore may not be changed or deleted by this rule.

13. *Comment.* One commenter suggested revision of § 83.7 to clarify the meaning of the word "disbursement" as it relates to the period during which the funds are available for use by the States (section 8(c)).

Response. Taken in the context of other parts of the Act (especially sections 6 and 8) and in view of the legislative record, we believe the word "disbursement" as cited by the commenter, should be interpreted as the commitment or obligation of Federal funds for subsequent expenditure for an approved undertaking by a State. Thus the funds are available through the fiscal year following the year of allocation. To clarify this, § 83.7 has been revised, using wording similar to the rules for the Federal Aid in Fish and Wildlife Restoration Programs.

14. *Comment.* One State suggested deleting from § 83.8(a) the requirement that the Applications for Federal Assistance contain such information as the regional director may require, replacing it with a detailed spelling out of the information required.

Response. We believe the present approach is preferable which consists of placing the more detailed list of information required for the application in the Federal Aid Manual and in directives for guidance of the regional director. Such detailed listings included in this rule would increase its volume and complexity and could result in unnecessary demands being placed on the States in certain instances.

15. *Comment.* One State challenged the word "optimize" as it is used in § 83.9(d), holding that optimization of populations may fail to meet agency objectives for a given species.

Response. The term "optimize" places the responsibility to determine the target levels on the State. This is accomplished as a part of the planning process. Since the optimum levels are fixed by the State, we believe the chances of their being in conflict with agency objectives will be minimal.

16. *Comment.* A citizens group indicated that § 83.9 is not sufficiently definitive. It was suggested that the rule should specify what population levels and distributions are optimum, how they must be determined, and what factors will be considered in determining methods and procedures to ensure the well-being and enhancement of plan species.

Response. In § 83.12 the State is required to employ "accepted planning techniques and appropriate procedures" in preparing its plan and the resulting plan must also meet the tests for substantiality given in that section. We believe spelling out requirements in § 83.9 with greater specificity would be unnecessary and in many cases would preempt the planning process.

17. *Comment.* One State questioned the usefulness of a conservation plan which coordinates and consolidates planning for all fish and wildlife in the presence of an existing plan for game species.

Response. This type of planning and associated provisions are specifically provided in the Act. Therefore, this feature is not subject to change through this rule.

18. *Comment.* One State proposed deletion of the specific dates in § 83.10(a)(1) and (2) which mark the end of certain activity periods and providing instead for periods of specific duration, scheduled to begin upon activation of the program.

Response. The dates are taken directly from the Act, leaving no latitude to express them as suggested, except by amendment of the Act.

19. *Comment.* One State inquired whether one inter-state project in a total conservation plan would enable a State to receive increased cost sharing across its entire plan.

Response. Such a project would justify increased cost-sharing only for that portion of the total plan which met the requirements stated in § 83.1.

20. *Comment.* One State proposed deletion under § 83.12(b) of the specific standards for a substantial project for implementing an approved plan, substituting a more generalized presentation.

Response. The Act is specific in requiring that plans as well as actions in lieu of approved plans must be substantial in character and design. We believe Congress also intended that actions carried out under approved plans should meet this same requirement, even though the Act failed to address this point. Section 83.12(b) is structured to define standards by which such actions would be judged to be substantial in character and design.

21. *Comment.* One State proposed that the prohibition of the use of Federal Aid funds for producing income should not apply to the use of these monies to develop funding sources for nongame.

Response. Though we could agree that development of a State revenue source could be rationalized as benefiting nongame resources, we do not believe the intent of the Act or of grant programs in general, is to participate in costs for producing State revenue. We believe § 83.13(c) as written, correctly restricts such use of funds provided by this program.

22. *Comment.* Two Federal Agencies proposed revision of the rule to ensure that planned actions which involve the use of Federal lands or facilities have been fully agreed to by the Federal agency involved.

Response. Appropriate wording has been added to § 83.9(i).

23. *Comment.* One State expressed concern that the rule makes no provision for information and education activities.

Response. Both information and education are considered fundable activities under this program, being specifically authorized in the Act (section 3(3)).

24. *Comment.* A Federal agency noted the requirement that lands and waters on which grant funds are to be expended must be under State control (§ 83.19). The agency expressed the concern that States might seek to acquire control of Federal lands in order to utilize these grants and suggested that provision should be inserted into the rule to avoid "the anomalous result of States using Federal money to acquire Federal land."

Response. We believe § 83.19 in combination with § 83.9(i), adequately covers the securing of land control, by whatever instrument, prior to the approval of funding for the action. Lands or rights acquired under a grant become the property of the State. Assuming conformance with all pertinent laws and regulations, a proposal to acquire needed land from a Federal agency would not be viewed differently from a proposal to acquire land from a private vendor. Thus, we see no need for the suggested revision.

In addition to the changes made as a result of comments received, internal review revealed that § 83.3(b) in the proposed rule was in apparent conflict with section 8(c)(2) in the Act; thus, § 83.3(b) was deleted from the final rule and other paragraphs in the section were renumbered accordingly. The grant program will be referenced in the Catalog of Federal Domestic Assistance as Program number 15.614, Fish and Wildlife Planning and Nongame Assistance.

The principal author of this rule is C. Phillip Agee, U.S. Fish and Wildlife Service, Division of Federal Aid, Washington, D.C. 20240, telephone 703/235–1526.

It has been determined that this rule is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.

Information Collection: The information collection requirement contained in this Part 83 has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1018–0048.

List of Subjects in 50 CFR Part 83

Fish grant programs—natural resources, Grant administration—wildlife.

Part 83 of Title 50, Code of Federal Regulations, is added as set forth below.

PART 83—RULES IMPLEMENTING THE FISH AND WILDLIFE CONSERVATION ACT OF 1980

Sec.

Authority: The Fish and Wildlife Conservation Act of 1980, 16 U.S.C. 2901.

The information collection requirement contained in this Part 83 has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1018–0048.

§ 83.1 Definitions.

As used in this part, the following terms mean:

(a) *Act.* The Fish and Wildlife Conservation Act of 1980, Pub. L. 96–366 (16 U.S.C. 2901, *et seq.*].

(b) *Conservation plan.* A plan for the conservation of fish and wildlife within a State which meets the requirements set forth in this part

(c) *Designated State agency or State agency.* The Commission, department, division or other agency of a State which has the primary legal authority for the conservation of fish and wildlife. If more than one agency is designated by the State to exercise such authority, the term means each such agency acting with respect to its assigned responsibilities.

(d) *Director.* The Director of the U.S. Fish and Wildlife Service or his/her designee.

(e) *Federal Aid Manual.* The publication of the U.S. Fish and Wildlife Service which contains policies, standards and procedures required for participation in the benefits of the Act.

(f) *Fish and Wildlife.* Wild vertebrate animals that are in an unconfined state.

(g) *Nongame fish and wildlife.* Fish and wildlife that:

(1) Are not ordinarily taken for sport, fur, food, or commerce within the State except that any species legally taken for sport, fur, food, or commerce in some but not all parts of a State may be deemed nongame within any area where such taking is prohibited; and

(2) Are not listed as endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531–1543); and

(3) Are not marine mammals within the meaning of section 3(5) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(5)); and

(4) Are not domesticated species that have reverted to a feral existence.

(h) *Plan species.* Any species or subspecies or ecologic association of species and subspecies which is designated to be addressed through actions set forth in an approved conservation plan.

(i) *Project.* A definitive proposal submitted by a State and approved by the regional director for funding under this Act.

(j) *Regional Director.* The regional director of the U.S. Fish and Wildlife Service or his/her designee.

(k) *Secretary.* The Secretary of the Interior or his/her designee.

(l) *State.* Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Trust Territories of the Pacific Islands, and the Commonwealth of the Northen Mariana Islands.

§ 83.2 Participant eligibility.

Participation is limited to designated State agencies. If a State places primary legal authority for the conservation of fish and wildlife in more than one agency, the governor or chief executive of that State shall designate the State agency which will serve to coordinate

the State actions under this Act. The director of each designated State agency shall notify the regional director, in writing, of the official(s) authorized to sign Federal Aid documents and of any changes in such authorizations.

§ 83.3 Allocation of funds.

In accordance with the provisions of the Act, the allocation of funds to the States shall take into account the area and population of each State.

(a) Area of the land and water of each State shall be as determined by the Department of Commerce and shall include the area of coastal and Great Lakes waters within each State.

(b) Population of each State shall be the most recent population estimates, as determined by the Department of Commerce.

§ 83.4 Eligible undertakings.

Funding under this Act may be approved by the regional director to carry out projects which meet the standards of substantiality as defined in § 83.12 and which conform to one of the following:

(a) A proposal to implement a nongame action in lieu of an approved conservation plan. Upon a showing of need, a State may request funding under this Act before a conservation plan is approved. Such a proposal must:

(1) Be for the purpose of conserving, restoring, or otherwise benefitting nongame fish and wildlife, its habitats or its users;

(2) Comply with standards contained in the Federal Aid Manual; and

(3) Consist of work to be accomplished before October 1, 1986.

(b) A proposal to develop or maintain a conservation plan. The designated State agency may apply for funding of a project for developing a conservation plan, coordinating or consolidating a conservation plan with other plans, or maintaining a previously approved conservation plan. State costs incurred later than September 30, 1991, for the development of a conservation plan cannot be approved for funding.

(c) A proposal to implement actions described in an approved conservation plan. Such a proposal specifies and requests funding to cover one or more of the nongame actions described in the approved conservation plan.

§ 83.5 Limitations.

The following limitations shall apply to the eligibility of projects for funding under the Act:

(a) Of the total estimated costs for any project proposed under this Act, not less than 80 percent shall be for work or activities for the principal benefit of nongame fish and wildlife resources or of the public use of these resources.

(b) Upon approval of a conservation plan, all projects must be limited to actions required for implementing or revising the plan or for coordinating or consolidating the plan with other plans.

(c) Not more than 10 percent of the costs of any project which is carried out in lieu of an approved conservation plan, or which is carried out under an approved conservation plan covering only nongame fish and wildlife resources, may be derived from the sale of hunting, fishing, and trapping licenses and from penalties (including forfeitures) for violations of hunting, fishing, and trapping laws of the State.

(d) Not more than 10 percent of the estimated costs for projects to be funded shall be for law enforcement activities.

(e) Not more than 10 percent of the cost of implementing any project under this Act shall be funded by in-kind contributions from third parties.

§ 83.6 Appeals.

Any difference of opinion over the eligibility of proposed activities or differences arising over the conduct of work may be appealed to the Director. Final determinations rests with the Secretary.

§ 83.7 Availability of funds.

Funds allocated to a State under the Act are available for obligation and expenditure during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. For the purpose of this section, obligation of allocated funds occurs when a project agreement is approved by the Regional Director.

§ 83.8 Submission of proposals for funding.

To make application for funds allocated under this Act, the State shall submit to the regional director an Application for Federal Assistance.

(a) Each application shall contain such information as the regional director may require to determine if the proposed activities are in accordance with the Act, the provisions of this part, and the standards contained in the Federal Aid Manual.

(b) Applications must be signed by the director of the designated State agency or the official(s) delegated to exercise the authority and responsibilities of such director in committing the State to participation under the Act.

§ 83.9 Conservation plans.

A conservation plan submitted to the regional director for approval shall meet the requirements for substantiality set forth in § 83.12(a) and the standards prescribed in the Federal Aid Manual, and shall:

(a) Identify the species of nongame fish and wildlife, and other fish and wildlife deemed appropriate by the designated State agency which are within the State and are valued for ecological, educational, aesthetic, cultural, recreational, economic, or scientific benefits by the public;

(b) Provide for inventory(ies) of the identified species (plan species) to determine:

(1) Their population size, distribution, and range; and

(2) The extent, condition, and location of their significant habitats.

(c) Identify the significant problems which may adversely affect the plan species:

(d) Determine actions which should be taken to conserve the plan species and their significant habitats. Actions proposed will seek to optimize population levels, population distributions, and human benefits while taking fully into account the effects on non-target species and user groups. The actions will utilize methods and procedures which will, to the maximum extent practicable, ensure the well-being and enhancement of the plan species;

(e) Establish priorities for implementing the actions proposed in (d);

(f) Provide for regular monitoring of the plan species and the effectiveness of the actions implemented;

(g) Provide for the review of the plan and revision, if appropriate, at intervals of not more than 3 years.

(h) Describe procedures by which inputs have been solicited from the public during plan development and by which inputs will be solicited during revision and implementation of the plan;

(i) Indicate State and Federal agencies which were consulted during plan development and which will be consulted during plan implementation. If plan implementation will entail substantive cooperation with other agencies, an agreement describing the intended cooperation and signed by the involved parties must be executed before funding is authorized.

§ 83.10 Cost sharing

Federal and State participation in the costs incurred in completion of approved work funded by this Act shall be limited as follows:

(a) The Federal share may not exceed:

(1) Ninety percent of the costs for development of conservation plans, except after September 30, 1984, the Federal share may not exceed 75 percent of the cost for development of

conservation plans, and after September 30, 1991, no reimbursement may be paid under this Act for development of a conservation plan;

(2) Seventy-five percent of the costs for implementing and revising an approved conservation plan, except the Federal share may be increased to 90 percent if two or more States have mutually agreed to cooperate in implementation projects, provided, however, that after September 30, 1991, the Federal share may not exceed 50 percent if the conservation plan covers only nongame species;

(3) Seventy-five percent of the costs incurred prior to October 1, 1986, for projects which are not covered by an approved conservation plan, except the Federal share may be increased to 90 percent if two or more States have mutually agreed to cooperate in projects.

(b) The State share of project costs:

(1) May be in the form of cash or in-kind contributions, subject to the limitations described in § 83.5 and the following conditions:

(i) The allowability and valuation of in-kind contributions shall be in accordance with the provisions of OMB Circular A–102 and the policies and standards as described in the Federal Aid Manual.

(ii) Volunteers proposed by the State to provide personal services to be claimed as in-kind contributions must possess qualifications appropriate to the service to be performed. The State must attest to such qualifications of all such volunteers based on the volunteers' training, experience or employment status, or upon an endorsement provided by a recognized institution, agency, or professional society.

(2) May not be derived from other Federal funds.

§ 83.11 Cooperation between States.

Whenever two or more States propose to cooperate in the revision of a conservation plan or in a conservation action which will result in a higher rate of Federal costsharing, such States shall describe in documentation the plan or action to be jointly undertaken. The proposed cooperation shall:

(a) Require each cooperating State to accept and carry out a substantial share of the described undertaking;

(b) Enhance the effectiveness of or reduce the total cost in accomplishing the project purpose;

(c) Be supported by a memorandum of understanding executed by the cooperating States.

§ 83.12 Project requirements.

Each project proposed for funding under the Act shall be substantial in character and design and shall be in conformance with the policies and standards contained in the Federal Aid Manual.

(a) A substantial project for plan development or plan maintenance is one which:

(1) Provides defined objectives related to completion or revision of the plan, with schedules for completion;

(2) Utilizes accepted planning techniques and appropriate procedures;

(3) Provides for public involvement;

(4) Accomplishes its purpose at a reasonable cost;

(5) Provides assurance that, upon completion of the plan, the State intends to be guided by the conservation plan being developed or maintained.

(b) A substantial project for implementation of approved conservation plans is one which:

(1) Identifies specific conservation actions contained in the plan;

(2) Identifies the objectives to be accomplished related to the needs described in the plan;

(3) Utilizes accepted conservation and management principles, sound design, and appropriate procedures.

(c) A substantial project for actions in lieu of an approved conservation plan is one which:

(1) Identifies and describes a need within the purposes of the Act;

(2) Identifies the objectives to be accomplished based on the stated need;

(3) Utilizes accepted conservation and management principles, sound design, and appropriate procedures;

(4) Will yield benefits which are pertinent to the identified need at a level commensurate with project costs.

§ 83.13 Application of funds provided under the Act.

(a) Funds provided under this Act shall be applied only to activities or purposes approved by the regional director or contained in a conservation plan approved by the regional director. If otherwise applied, such funds must be replaced by the State to maintain eligibility.

(b) Real property acquired or constructed with Federal Aid funds must continue to serve the purpose for which acquired or constructed:

(1) When such property passes from management control of the designated State agency, either the control must be fully restored to the designated State agency or the real property must be replaced using non-Federal Aid funds. Replacement property must be of equal value at current market prices and with equal or commensurate nongame fish and wildlife benefits as the original property. The State may be granted up to 3 years from the date of notification by the regional director, to acquire replacement property before becoming ineligible.

(2) When such property is used for purposes which interfere with the accomplishment of approved purposes, the violating activities must cease and any adverse effects resulting must be remedied.

(3) When such property is no longer needed or useful for its original purpose, and with prior approval of the regional director, the property shall be used or disposed of as provided in Attachment N of OMB Circular A–102.

(c) Federal Aid funds shall not be used for the purpose of producing income. However, income producing activities incidental to accomplishment of approved purposes are allowable. Income derived from such activities shall be accounted for in the project records and its disposition shall be in accordance with Attachment E of OMB Circular A–102.

§ 83.14 Allowable costs.

Allowable costs are limited to those which are necessary and reasonable for accomplishment of the approved project or action and are in accordance with the cost principles of OMB Circular A–87.

(a) All costs must be supported by source documents or other records as necessary to substantiate the application of funds. Such documentation and records are subject to review by the Secretary to determine the allowability of costs.

(b) Costs incurred prior to the effective date of the project agreement are allowable only when specifically provided for in the project agreement.

(c) Projects or facilities designated to include purposes other than those eligible under the Act shall provide for the allocation of costs among the various purposes. The method uses to allocate costs shall produce an equitable distribution of costs based on the relative used or benefits provided.

§ 83.15 Payments.

Payments to the State shall be made for the Federal share of allowable costs incurred by the State in accomplishing approved projects.

(a) Requests for payments shall be submitted on forms furnished by the regional director.

(b) Payments shall be made only to the office or official specified by the designated State agency and authorized under the laws of the State to receive public funds for the State.

(c) All payments are subject to final determination of allowability based on

audit. Any overpayments made to the State shall be recovered as directed by the regional director.

§ 83.16 Maintenance.

The State is responsible for maintenance of all capital improvements acquired or constructed with Federal Aid funds throughout the useful life of each improvement. Costs for such maintenance are allowable when provided for in approved projects. The maintenance of improvements acquired or constructed with non-Federal Aid funds are allowable costs when such improvements are necessary to accomplishment of project purposes as approved by the regional director, and when such costs are otherwise allowable by law.

§ 83.17 Responsibilities

In the conduct of activities funded under the Act, the State is responsible for:

(a) The supervision of each project to assure that it is conducted consistent with the project documents and that it provides:

(1) Proper and effective use of funds;

(2) Maintenance of project records;

(3) Timely submission of reports;

(4) Regular inspection and monitoring of work in progress.

(b) The selection and supervision of project personnel to assure that:

(1) Adequate and competent personnel are available to carry the project through to a satisfactory and timely completion;

(2) Project personnel perform the work to ensure that time schedules are met, projected work units are accomplished, other performance objectives are achieved, and reports are submitted as required.

(c) The accountability and control of all assets to assure that they serve the purposes for which acquired throughout their useful life.

(d) The compliance with all applicable Federal, State, and local laws.

(e) The settlement and satisfaction of all contractual and administrative issues arising out of procurement entered into.

§ 83.18 Records.

The State shall maintain current and complete financial, property and procurement records in accordance with requirements contained in the Federal Aid Manual and OMB Circular A–102.

(a) Financial, supporting documents, and all other records pertinent to a project shall be retained for a period of 3 years after submission of the final expenditure report on the project. If any litigation, claim, or audit was started before the expiration of the 3-year period, the records shall be retained until the resolution is completed. Records for nonexpendable property shall be retained for a period of 3 years following final disposition of the property.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the State.

§ 83.19 Land control.

The State must control lands or waters on which capital improvements are made with Federal Aid funds. Control may be exercised through fee title, lease, easement, or agreement. Control must be adequate for protection, maintenance, and use of the improvement throughout its useful life.

§ 83.20 Assurances.

The State must agree to and certify that it will comply with all applicable Federal laws, regulations, and requirements as they relate to the application, acceptance, and use of Federal funds under the Act. The Secretary shall have the right to review or inspect for compliance at any time. Upon determination of noncompliance, the Secretary may terminate or suspend any actions or projects in noncompliance, or may declare the State ineligible for further participation in program benefits until compliance is achieved.

Dated: September 27, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

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